

FILED

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SECRETARY, BOARD OF
OIL, GAS & MINING

**BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

IN THE MATTER OF THE REQUEST FOR
AGENCY ACTION OF ENEFIT AMERICAN
OIL FOR AN ORDER ENLARGING THE
DESIGNATED OIL SHALE AREA CREATED
BY CAUSE NOS. 190-3 AND 190-13 TO
INCLUDE LANDS LOCATED IN TOWNSHIPS 9
AND 10 SOUTH, RANGES 24 AND 25 EAST,
SLM, UINTAH COUNTY, UTAH.

**PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER FOR STATE OF UTAH
LANDS**

Docket No. 2015-017

Cause No. 190-14

Enefit American Oil ("Enefit") originally filed the Request for Agency Action in this matter on April 8, 2015, requesting that the Board of Oil, Gas and Mining (the "Board") enter an order enlarging the Designated Oil Shale Area created by Cause Nos. 190-3 and 190-13 to certain federal, state, and fee lands. This matter came before the Board on Wednesday, May 27, 2015, and the Board entered an order approving the Request as to the federal and fee lands. This matter was continued as to the lands owned by the State of Utah, identified in the Request as the "SITLA Leases."

Enefit filed an Amended Request for Agency Action for the SITLA Leases on June 11, 2015 (the "Amended Request"). The hearing on the Amended Request came before the Board on June 24, 2015, at approximately 9:00 a.m. in the auditorium of the Utah Department of Natural Resources, 1594 West North Temple, Salt Lake City, Utah. The following Board members were present and participated in the hearing: Ruland J. Gill, Jr., Chairman, Susan S.

Davis, Gordon L. Moon, Chris Hansen, Richard Borden, Carl F. Kendell, and Michael Brown.

The Board was represented by Michael S. Johnson, Assistant Attorney General.

Testifying on behalf of Enefit was Rikki Hrenko-Browning, CEO. Enefit was represented by Mark L. Burghardt of Holland & Hart, LLP.

Also participating in the hearing was Respondent T-K Production Company ("T-K"), an oil and gas lessee in the majority of the State of Utah lands. Testifying on behalf of T-K was Tom Hauptman, President, and Thomas K. Hohn, Senior Registered Petroleum Engineer at Hohn Engineering, PLLC. The Board recognized Mr. Hohn as an expert in petroleum engineering for purposes of this Cause. T-K was represented by Frederick M. MacDonald of MacDonald & Miller Mineral Legal Services, PLLC.

Testifying on behalf of the Division of Oil, Gas and Mining (the "Division") was Dustin Doucet, Petroleum Engineer. The Division was represented by Steven F. Alder, Assistant Attorney General.

The Board, having fully considered the testimony and exhibits in this matter, being fully advised, and for good cause shown, hereby enters the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

1. Enefit is a Delaware Corporation in good standing, with its principal place of business in Salt Lake City, Utah. Enefit is qualified to do business in Utah and is fully and appropriately bonded with all Federal and State of Utah agencies.

2. The Amended Request covered the following State of Utah lands:

a. SITLA Leases ML-49104, ML-49105, ML-49106:

Township 9 South, Range 25 East, SLM

Section 19: S $\frac{1}{2}$

Section 30: Lots 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15, N $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$

Section 31: Lots 1,2,3, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$, S $\frac{1}{2}$

Section 28: S $\frac{1}{2}$

Section 33: Lots 1,2,3,4,5, NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$

Township 10 South, Range 24 East, SLM

Section 1: Lots 1,2,3,4,5, SE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ S $\frac{1}{2}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$,
SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$

(the "Subject Lands").

3. Enefit is currently in the process of developing a commercial oil shale project in Uintah County, Utah.

4. The oil shale underlying the Subject Lands is leased 100% by Enefit's subsidiary, EAO State Leases, LLC. The oil and gas underlying all of the Subject Lands except the above described Section 1 lands are leased 100% to T-K. As to the oil and gas underlying the Sec. 1 lands, T-K has a right of first leasing if and when the current lease covering such lands expires.

5. Evidence presented by Enefit confirmed the presence of a substantial and valuable oil shale resource underlying the Subject Lands. This oil shale resource varies by depth throughout the Subject Lands.

6. A copy of the Request and the Amended Request was mailed to the last known addresses of record for all persons having a legally protected interest in the Subject Lands, return receipt requested.

7. Notice of the filing of the Request and of the hearing was duly published in the Salt Lake Tribune and the Deseret Morning News on May 3, 2015, and the Uintah Basin Standard and the Vernal Express on May 5, 2015.

8. The vote of the Board members present at the hearing was unanimous in favor of partially granting the Amended Request to establish a Designated Oil Shale Area pursuant to Utah Admin. Code R649-3-31 for the Subject Lands. The Board also clarified that Paragraph 8 of Utah Admin. Code R649-3-31 does not impose an obligation to cement surface casing through the entire oil shale zone, but whatever casing that does penetrate the oil shale zone, whether surface, intermediate or production string, must be cemented through the entire oil shale zone. The Amended Request was partially denied insofar as Enefit sought to apply any additional standards beyond the general requirements in Utah Admin. Code R649-3-31 as so clarified.

CONCLUSIONS OF LAW

9. Due and regular notice of the time, place, and purpose of the hearing was properly given in the form and manner as required by law and the rules and regulations of the Board and Division to all parties whose legally protected interests are affected by the Amended Request.

10. The Board has jurisdiction of the parties and of the subject matter pursuant to Utah Code Ann. § 40-6-1. *et seq.* and Utah Admin. Code R649-3-31.

11. Enefit has sustained its burden of proof, demonstrated good cause, and satisfied all legal requirements for granting the Amended Request insofar as they relate to declaring the Subject Lands as a "Designated Oil Shale Area" pursuant to Utah Admin. Code R649-3-31. As a consequence, the provisions of said Rule shall apply to the Subject Lands with the clarification outlined in Findings of Fact No. 8 above.

ORDER

Based upon these findings of fact and conclusions of law, the Amended Request and T-K's Response, and testimony and exhibits admitted into evidence, the Board hereby orders:

1. The Amended Request in this matter is granted as follows as to the Subject Lands.
 - a. The Subject Lands are established as a Designated Oil Shale Area in accordance with Utah Admin Code R649-3-31.
 - b. Oil and gas operators must comply with the provisions of Utah Admin. Code R649-3-31, with the understanding that Paragraph 8 of Utah Admin. Code R649-3-31 does not impose an obligation to cement surface casing through the entire oil shale zone, but whatever casing that does penetrate the oil shale zone, whether surface, intermediate or production string, must be cemented completely through the oil shale zone..
2. The Board has considered and decided this matter as a formal adjudication, pursuant to the Utah Administrative Procedures Act, Utah Code Ann. §§ 63G-4-204 through 208, and of the Rules of Practice and Procedure before the Board of Oil, Gas and Mining, Utah Admin. Code R641.

3. This order is based exclusively upon evidence of record in this proceeding or on facts officially noted, and constitutes the signed written order stating the Board's decision and the reasons for the decision, as required by the Utah Administrative Procedures Act, Utah Code Ann. § 63G-4-208, and the Rules of Practice and Procedure before the Board of Oil, Gas and Mining, Utah Admin. Code R641-109; and constitutes a final agency action as defined in the Utah Administrative Procedures Act and Board rules.

4. **Notice of Right of Judicial Review by the Supreme Court of the State of Utah.** As required by Utah Code Ann. § 63-G-4-208(e) through (g), the Board hereby notifies all parties to this proceeding that they have the right to seek judicial review of this order by filing an appeal with the Supreme Court of the State of Utah within 30 days after the date this order is entered. Utah Code Ann. § 63G-4-401(3)(a) and 403.

5. **Notice of Right to Petition for Reconsideration.** As an alternative, but not as a prerequisite to judicial review, the Board hereby notifies all parties to this proceeding that they may apply for reconsideration of this order. Utah Code Ann. § 63G-4-302. The Utah Administrative Procedures Act provides:

(1) (a) Within 20 days after the date that an order is issued for which review by the agency or by a superior agency under Section 63-46b-12 is unavailable, and if the order would otherwise constitute final agency action, any party may file a written request for reconsideration with the agency, stating the specific grounds upon which relief is requested.

(b) Unless otherwise provided by statute, the filing of the request is not a prerequisite for seeking judicial review of the order.

(2) The request for reconsideration shall be filed with the agency and one copy shall be sent by mail to each party by the person making the request.

(3)(a) The agency head, or a person designated for that purpose, shall issue a written order granting the request or denying the request.

(b) If the agency head or the person designated for that purpose does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered to be denied. *Id.*

The Rules of Practice and Procedure before the Board of Oil, Gas and Mining entitled "Rehearing and Modification of Existing Orders" state:

Any person affected by a final order or decision of the Board may file a petition for rehearing. Unless otherwise provided, a petition for rehearing must be filed no later than the 10th day of the month following the date of signing of the final order or decision for which the rehearing is sought. A copy of such petition will be served on each other party to the proceeding no later than the 15th day of that month. Utah Admin. Code R641-110-100.

The Board hereby rules that should there be any conflict between the deadlines provided in the Utah Administrative Procedures Act and the Rules of Practice and Procedure before the Board of Oil, Gas and Mining, the later of the two deadlines shall be available to any party moving to rehear this matter. If the Board later denies a timely petition for rehearing, the aggrieved party may seek judicial review of the order by perfecting an appeal with the Utah Supreme Court within 30 days thereafter.

6. The Board retains exclusive and continuing jurisdiction of all matters covered by this order and of all parties affected thereby; and specifically, the Board retains and reserves exclusive and continuing jurisdiction to make further orders as appropriate and authorized by statute and applicable regulations.

7. The Chairman's signature on a facsimile copy of this order shall be deemed the equivalent of a signed original for all purposes.

DATED this _____ day of July, 2015.

STATE OF UTAH
BOARD OF OIL, GAS, AND MINING

By: _____
Ruland J. Gill, Jr., Chairman

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 22nd day of July, 2015, a true and correct copy of the foregoing **PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR STATE OF UTAH LANDS** was mailed, postage prepaid, to the following:

Michael S. Johnson, Esq.
Assistant Attorney General
Attorney for the Board of Oil, Gas and Mining
1594 West North Temple, Suite 300
Salt Lake City, UT 84114

Steven F. Alder, Esq.
Assistant Attorney General
Attorney for the Division of Oil, Gas and Mining
1594 West North Temple, Suite 300
Salt Lake City, UT 84114

T-K Production.
c/o Frederick M. MacDonald
MacDonald & Miller
7090 S. Union Park Avenue, Suite 400
Midvale, UT 84047

Respectfully submitted this 22nd day of July, 2015.

By:

A handwritten signature in blue ink that reads "Heather Robertson". The signature is written in a cursive style with a large, looping "H" and "R".